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No. 88-1692

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

ASSOCIATED BUILDERS, INC.,
Petitioner,
v.
CLARENCE MEIGGS, *et al.*,
Respondents.

FAITH CONSTRUCTION COMPANY,
Petitioner,
v.
TERRY FRAZIER, *et al.*,
Respondents.

KBR CORPORATION,
Petitioner,
v.
HARRY HOBBS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

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BRIEF FOR THE COMMONWEALTH OF VIRGINIA AND THE STATE OF MARYLAND AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF INTEREST OF *AMICI CURIAE*

The Commonwealth of Virginia and the State of Maryland [1] are Signatories to the Washington Metropolitan Area Transit Authority Compact.[2] The Compact created the Washington Metropolitan Area Transit Authority ("WMATA") as an interstate agency of Virginia and Maryland, as well as the District of Columbia, and charged WMATA with the responsibility for constructing, operating and maintaining the Metro Transit System for the people of the greater Washington, D.C. vicinity on behalf of the Signatories. Virginia and Maryland have a continuing role in the construction, operation and maintenance of the Metro Transit System through their representatives on the WMATA Board. In addition, Virginia and Maryland help to finance that system by contributing state funds for WMATA's operating budget, from which WMATA pays damages awards and claims under the workers' compensation programs of all three jurisdictions.[3]

Based on their interests in WMATA, Virginia and Maryland participated in *WMATA v. Johnson*, 467 U.S. 925 (1984), as *amici curiae* in support of WMATA. In *WMATA v. Johnson*, this Court found the statutory language at issue to be "plain" and "clear," and de-

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[1] The Commonwealth of Virginia and the State of Maryland submit this brief as *amici curiae* pursuant to Sup. Ct. R. 36.4.

[2] Washington Metropolitan Area Transit Authority Interstate Compact, Pub. L. No. 89-774, 80 Stat. 1324 (1966), as amended by the National Capital Area Transit Act of 1972, Pub. L. No. 92-517, § 601, 86 Stat. 999 (1972), and the Washington Metropolitan Area Transit Regulation Compact, Pub. L. No. 94-306, 90 Stat. 672 (1976). *See* 1966 Va. Acts Ch. 2, *referenced at* Va. Code Ann. § 56-529, -530 (1986 Replacement Vol. & Supp. 1988); 1965 Md. Laws Ch. 869, *codified at* Md. Ann. Code [Transportation] § 10-204, -205 (1977 & Supp. 1988).

[3] The suburban Virginia communities served by Metrorail and Metrobus also contribute to the operation of the transit system.

termined that under that language general contractors such as WMATA are entitled to immunity "unless the contractor has neglected to secure workers' compensation coverage after the subcontractor failed to do so." 467 U.S. at 936, 938. Consequently, this Court specifically concluded that WMATA, which had purchased a comprehensive "wrap-up" insurance policy, had not defaulted on its statutorily-defined duty and, therefore, was clearly entitled to immunity. *Id.* at 940-41.

Nevertheless, in *Meiggs v. Associated Builders, Inc.*, Petitioners' Appendix ("Pet. App.") 1a-17a, the District of Columbia Court of Appeals has refused to follow this Court's construction of the same statutory language [4] and held that general contractor immunity is available in the District "*only* when the actual employer—the subcontractor—defaults on its statutory obligation, and the general contractor steps in to secure payment." Pet. App. 9a (emphasis in original). Thus, under *Meiggs* WMATA would not be entitled to immunity even though the wrap-up policy purchased by WMATA "guaranteed that every Metro subcontractor would satisfy and keep satisfied its primary statutory obligation to obtain worker's compensation coverage." *WMATA v. Johnson*, 467 U.S. at 940.

Accordingly, unless the *Meiggs* decision is reversed, WMATA will be subject to tort liability in the District of Columbia in addition to the workers' compensation awards it has already paid. Such liability would have a

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[4] Although the actual statute that was before the *Meiggs* court is different—the District of Columbia Workers' Compensation Act of 1979 versus the District of Columbia Workmen's Compensation Act of 1928—the exact statutory language at issue before that court was the same as that before this Court in *WMATA v. Johnson*.

serious, adverse financial impact upon both Virginia and Maryland.[5]

SUMMARY OF ARGUMENT

Contrary to the uniform understanding of the Signatories to the WMATA Compact, the *Meiggs* decision creates an anomaly in the law concerning general contractor immunity. The laws of Virginia and Maryland clearly provide a general contractor under the circumstances at issue with complete immunity from suit for all employment-related accidents. At the time of the adoption of the WMATA Compact, the Signatories presumed that the same principles of immunity would apply in the District of Columbia and consequently intended that WMATA be uniformly provided with immunity in all three jurisdictions. In *WMATA v. Johnson*, this Court definitively confirmed that WMATA is entitled to immunity in the District of Columbia. Accordingly, if the D.C. Court of Appeals' contradictory decision in *Meiggs* is allowed to stand, the Signatories' intent, expectations and reliance will be subverted.

The Signatories not only have an important interest in protecting the viability and uniform treatment of their interstate compact; they also have an important interest in conserving their litigation resources and maintaining the integrity of judicial decisions in their favor. Here, both the Signatories and WMATA itself—as well as the courts—have expended considerable time, effort, and fi-

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[5] There is no question that the lower court's refusal to follow this Court's *WMATA v. Johnson* decision will also have an adverse financial impact on the third Signatory to the WMATA Compact—the District of Columbia. The District Government's participation as an *amicus* in support of the petition was therefore sought, but the District declined to participate. We understand from counsel to the petitioners that the basis for the refusal is the District's view that this Court should *never* review a local District law, even where, as here, the D.C. Court of Appeals has refused to follow this Court's construction of language incorporated in that law.

nances in litigating the meaning of statutory language governing WMATA's immunity in the District of Columbia. That meaning was definitively settled by this Court's decision in *WMATA v. Johnson*. The lower court's decision to reopen that question not only flouts this Court's authority, but it also offends all the important interests protected by *stare decisis*. This Court should not permit such a result.

ARGUMENT

I. The Court Should Grant Certiorari to Preserve the Interests of the Signatories to an Interstate Compact.

The decision of the D.C. Court of Appeals in *Meiggs* to deny general contractors immunity under the circumstances at issue will have an adverse impact on the considerable financial interests that Virginia and Maryland have in WMATA. WMATA's revenues are intended to be the principal source of its operating funds; however, Virginia and Maryland, along with the District of Columbia and the federal government, compensate for the operating deficit as well as provide construction funds. Both Virginia and Maryland have a substantial commitment to funding WMATA's construction and operating costs.

For example, in fiscal year 1989 alone Virginia's financial commitment to WMATA exceeds $57,500,000.00, which includes the approximately $10,000,000.00 that Virginia is required to provide annually on behalf of the cities of Alexandria, Fairfax and Falls Church and the counties of Fairfax and Arlington.[6] And, it is expected that Virginia's total commitment in fiscal year 1990 will be close to $70,000,000.00. More specifically, approximately $14,000,000.00 of Virginia's total commitment in fiscal year 1989 is for WMATA's construction budget, from which any tort judgments or settlements

[6] In addition, the localities of Alexandria, Arlington, Fairfax City, Fairfax County, and Falls Church will provide additional funds in fiscal year 1989 totalling approximately $74,100,000.00.

would be funded. Similarly, the Maryland Department of Transportation's contribution to WMATA's construction budget for fiscal year 1989 is close to $19,000,000.00 and is anticipated to total $22,343,000.00 in fiscal year 1990. Moreover, in fiscal year 1989 Maryland's contribution to WMATA's operating deficit is approximately $44,300,000.00, an amount which is expected to rise to approximately $45,184,000.00 in fiscal year 1990.[7]

Thus, a ruling that suddenly exposes WMATA to liability in the District of Columbia when it previously was entitled to immunity will undoubtedly have a substantial adverse impact on the States' treasuries.[8] Moreover, denying WMATA immunity would threaten the integrity of and eliminate the cost savings from WMATA's wrap-up insurance program, which efficiently provides a myriad of benefits that would be lost if individual subcontractors were forced to obtain their own compensation coverage. *See WMATA v. Johnson*, 467 U.S. at 928-29.

When they entered into the WMATA Compact, Virginia and Maryland did not intend that they would have to bear such substantial costs based on WMATA's exposure to tort liability as to injuries for which it provided worker-compensation benefits. Rather, the Signatories to the Compact had a *mutual* understanding that there would be *uniform* treatment with respect to the liabilities that WMATA would incur under the Compact and that that treatment would include immunity in the circumstances presented by the *Meiggs* cases. Indeed, at the time the Compact was entered—and as remains

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[7] Prince George's County and Montgomery County also contribute to WMATA's operating deficit: in fiscal year 1989 their contributions total approximately $14,767,000.00, and in fiscal year 1990 they will contribute approximately $15,062,000.00.

[8] Indeed, because a large part of the unbuilt Metrorail System—the Green Line—lies within the District of Columbia and workers' compensation claims typically arise in the construction context, the impact of the *Meiggs* decision will certainly be felt in Virginia and Maryland if not overturned.

true today—the law in both Virginia and Maryland clearly provided general contractors with complete immunity from tort suits in circumstances like those at issue in *Meiggs*.[9] Plainly, neither Virginia nor Maryland would have assumed liability for an interstate agency in which it has a considerable financial interest in circumstances where its own private contractors would not be liable under the State's laws.

Moreover, Virginia and Maryland's understanding that general contractors also enjoyed immunity in the District of Columbia was confirmed by the D.C. Court of Appeals in *O'Connell v. Maryland Steel Erectors, Inc.*, 495 A.2d 1134 (D.C. 1985), *cert. denied*, 475 U.S. 1066 (1986). In *O'Connell*, the court ruled that one important purpose of the D.C. Council in adopting the 1979 Workers' Compensation Act was to ensure that the workers' compensation law in D.C. would be in close conformity with comparable Maryland and Virginia law. 495 A.2d at 1141 & n.13. Because the D.C. Council, in the 1979 Act, did not change any of the immunity provisions that existed at the time the WMATA Compact was formed, it should be assumed that D.C. law with respect to immunity was already in conformity with Virginia and Maryland law. Indeed, this Court's decision in *WMATA v. Johnson* confirmed that D.C. law prior to the 1979 Act paralleled Virginia and Maryland law.

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[9] *See, e.g.*, Md. Ann. Code art. 101, § 62 (1985 Replacement Vol.); *State ex rel. Reynolds v. City of Baltimore*, 199 Md. 289, 86 A.2d 618 (Md. 1952); Va. Code Ann. §§ 65.1-30, 1-40 (1987 Replacement Vol.); *Evans v. Newport News Shipbuilding & Dry Dock Co.*, 361 F.2d 364 (4th Cir.), *cert. denied*, 385 U.S. 959 (1966); *Anderson v. Thorington Construction Co.*, 201 Va. 266, 110 S.E.2d 396 (1959), *appeal dismissed*, 363 U.S. 719 (1960); *see also Rasnick v. The Pittston Co., Inc.*, —— Va. ——, —— S.E. 2d —— (1989) (reaffirming immunity of statutory employer by holding that an injured employee of subsidiary corporation who had received workers' compensation payments was barred from maintaining tort action against subsidiary's parent and sister corporations, who were found to be statutory employers).

Thus, by denying general contractors immunity, the *Meiggs* decision is in complete conflict with the laws of Virginia and Maryland. This result is contrary not only to the D.C. Court of Appeals' prior interpretation of the purposes of the D.C. workers' compensation law, but also to the agreed-upon intent of the Signatories to the WMATA Interstate Compact that there would be uniform treatment with respect to the liabilities that WMATA would incur.

Accordingly, the Court should grant certiorari to preserve the interests of the Signatories to the WMATA Compact.

II. The Court Should Grant Certiorari to Maintain the Integrity of Its Decisions and to Prevent Re-Litigation of Settled Matters.

In *Meiggs*, the D.C. Court of Appeals addressed precisely the same statutory language that this Court construed in *WMATA v. Johnson*, but refused to follow this Court's construction of that language. In defying this Court's decision, the D.C. Court of Appeals ignored the practical values served by *stare decisis* and substantially impaired the interests of the parties—including Virginia and Maryland as *amici curiae*—who fully litigated and subsequently relied on this Court's dispositive ruling in *WMATA v. Johnson*.

Notwithstanding the D.C. Court of Appeals' cavalier attitude toward this Court's precedents, "the doctrine of *stare decisis* is still a powerful force in our jurisprudence." *United States v. Maine*, 420 U.S. 515, 527 (1975). As this Court has explained, *stare decisis* "not only plays an important role in orderly adjudication; it also serves the broader societal interests in evenhanded, consistent and predictable application of legal rules. When rights have been created or modified in reliance on established rules of law, the arguments against their change have special force." *Thomas v. Washington Gas*

Light Co., 448 U.S. 261, 272 (1980). Accordingly, this Court has "long held that the doctrine of *stare decisis* carries particular force where the effect of re-examination of a prior rule would be to overturn" accepted commercial practice. *Maine*, 420 U.S. at 528 n.9. *Cf. Thomas*, 448 U.S. at 277 (principles of *stare decisis* not served by attempting to revive decision upon which "there appears to be little danger that there has been any significant reliance on its rule").[10] In *Meiggs*, the D.C. Court of Appeals undermined this Court's authority by completely disregarding the broader societal interests served by the doctrine of *stare decisis*.

In *WMATA v. Johnson*, this Court definitively construed statutory language and found its meaning "plain" and "clear." WMATA was a party to that case, and Virginia and Maryland, as *amici curiae* in support of WMATA, demonstrated the substantial interest they have concerning the issue of general contractor immunity. Virginia and Maryland believed that this Court's dispositive ruling on that issue finally settled the question and ensured that the law among the three signatory

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[10] One commentator has explained that under the doctrine of *stare decisis* "courts must take into account both the possible unfairness in repudiating an established principle on which there has been justifiable reliance and the level of disruption that will be brought about by change." 1B J. Moore, J.D. Lucas & T. Currier, *Moore's Federal Practice* ¶ 0.402[3-1] at 50 (2d ed. 1988). Moreover, because society has "a strong interest in stability, predictability, and equal treatment . . . change in law can come through legislation . . . [and] [i]t is often better that it does . . . [because] [t]he legislative process involves public discussion . . . and is calculated to expose the views of a spectrum of persons who may be affected by changes in the law." *Id.* at 47. *Cf. Thomas*, 448 U.S. at 272 n.18 (*stare decisis* has more limited application when precedent rests on constitutional grounds because "correction through legislative action is practically impossible") (quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 407 (1932) (Brandeis, J., dissenting), *overruled on other grounds, Helvering v. Bankline Oil Co.*, 303 U.S. 362 (1938)).

jurisdictions was uniform, as the Signatories understood it to be. Both States, as well as WMATA, have significantly relied on this Court's decision, which is now five years old.

Although the D.C. Court of Appeals considered precisely the same issue and statutory language that this Court construed in *WMATA v. Johnson*, that court defied this Court's ruling and reached a completely opposite result. The *Meiggs* decision is manifestly unfair inasmuch as it significantly impairs the interests of the parties and *amici* that were settled in *WMATA v. Johnson* and that have solidified through reliance on that decision.

Accordingly, Virginia and Maryland, as *amici curiae*, fully support the portion of the Petition that urges the Court to grant certiorari so that the Court may maintain the integrity of its decisions.

CONCLUSION

For all of the foregoing reasons, the Court should grant the writ of certiorari and reverse the decision below.

Respectfully submitted,

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